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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Danny Louis Musgrove,

10 Petitioner,

11 v.

12 David Shinn,

13 Respondent.
14

No. CV-22-00221-TUC-JGZ

ORDER

15 On December 15, 2023, the Court dismissed Petitioner's Petition for Writ of Habeas
16 Corpus pursuant to 28 U.S.C. § 2254 for lack of jurisdiction because Musgrove failed first
17 to obtain the Ninth Circuit's authorization to file a successive petition as required by 28
18 U.S.C. § 2244(b)(3). The Court also concluded that the Petition was untimely.

19 On December 26, 2023, the Petitioner simultaneously filed a Notice of Appeal (Doc.
20 18) and Request for Certificate of Appealability (Doc. 17). In the Request, Petitioner asks
21 this Court to issue a certificate of appealability as to its December 15th Order.

22 In an Order filed February 20, 2024, the Ninth Circuit remanded the case back to
23 this Court for the limited purpose of granting or denying a certificate of appealability. (Doc.
24 20.) The Court now responds to that Order.

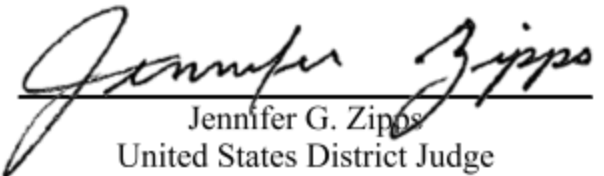
25 The Court concludes that a Certificate of Appealability (COA) should not issue.
26 Petitioner failed first to obtain the Ninth Circuit's authorization to file his successive
27 petition as required by 28 U.S.C. § 2244(b)(3), and his Petition was untimely. Pursuant to
28 28 U.S.C. § 2253(c)(2), a COA may issue only when the petitioner "has made a substantial

1 showing of the denial of a constitutional right.” The Court must indicate which specific
2 issues satisfy this showing. *See* 28 U.S.C. § 2253(c)(3). With respect to claims rejected
3 on the merits, a petitioner “must demonstrate that reasonable jurists would find the district
4 court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*,
5 529 U.S. 473, 484 (2000). For procedural rulings, a COA will issue only if reasonable
6 jurists could debate whether the petition states a valid claim of the denial of a constitutional
7 right and whether the court’s procedural ruling was correct. *Id.* Applying these standards,
8 the Court concludes that a certificate should not issue, as the resolution of the Petition is
9 not debatable among reasonable jurists.

10 **IT IS ORDERED** that Petitioner’s Application for a Certificate of Appealability
11 (Doc. 17) is **denied**.

12 The Clerk of the Court shall provide a copy of this Order to the Clerk’s Office of
13 the United States Court of Appeals for the Ninth Circuit.

14 Dated this 29th day of February, 2024.

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18 Jennifer G. Zippo
United States District Judge
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